

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Service Rules for the 698-746, 747-762, and 777-792 MHz Bands)	WC Docket No. 06-150
)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network)	PS Docket No. 06-229
In the 700 MHz Band)	

REPLY COMMENTS OF THE CITY OF PHILADELPHIA

The City of Philadelphia (“City”) respectfully submits these comments in reply to comments submitted to the Commission in response to the Second Further Notice of Proposed Rulemaking (“Second FNPRM”) released on May 14, 2008, in the above-captioned proceeding.

I. INTRODUCTION

The City shares many of the concerns raised by other local and state governments regarding the lack of local control over the terms governing the use of a nationwide interoperable network. As noted by the City and County of San Francisco (“San Francisco”), these concerns, if not properly addressed by the Commission, may cause local public safety agencies to opt out of the system.¹ In order to avoid this result, which compromises the very goals a nationwide system is

¹ Comments of the City and County of San Francisco, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229 (filed June 20, 2008) (“San Francisco Comments”) at 2.

intended to accomplish, we urge the Commission to take steps safeguarding the utility of the 700 MHz public safety spectrum by guaranteeing a role for state and local governments in the design, deployment, and use of any shared networks that may result from public/private partnerships.

II. DISCUSSION

A. Local Government Concerns.

1. Local Control and Decision-Making is Critical to the Success of a National Public/Private Partnership.

We share with National Association of Telecommunications Officers and Advisors (“NATOA”) and San Francisco many concerns arising from centralized design and management of a national network. Decisions related to design of the network must be made at the regional or local level to ensure that the needs of the public safety users are adequately met.² These decisions include, among others, the coverage of the network and the applications and equipment to be supported.³

² “Each community should have a say in how the local network meets such key public safety needs including interconnection with existing wired and wireless networks to ensure interoperability with other communications resources; rapid authorization and de-authorization of public safety users, so as to respond both to emergency needs for new users and to remove users in the event of a security compromise, determination of what constitutes an emergency for purposes of prioritization of public safety traffic; and selection of devices and applications so long as they meet standards so as ‘to serve a range of existing and unanticipated public safety challenges.’” Comments of the National Association of Telecommunications Officers and Advisors, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229 (filed June 20, 2008) (“NATOA Comments”) at 11 (quoting the Technical Report prepared by Columbia Telecommunications Corporation, included with NATOA Comments, at 3; internal footnotes omitted).

³ See *San Francisco Comments* at 6-7. The suggestion by the Public Safety Spectrum Trust that it have sole authority for authorization of equipment and applications to be used is unacceptable, and would usurp local government’s authority in managing public safety users; see Comments of the Public Safety Trust Corporation, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229; *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications*

Because different jurisdictions, and different users within jurisdictions, will have different requirements, a “one-size-fits-all” approach designed at the national level is doomed to failure.⁴ Ceding local control in an attempt to attract commercial bidders risks alienating the very public safety users the network is intended to serve.

San Francisco also points out the difficulty of reaching a Network Sharing Agreement (“NSA”) that will meet the needs of both the commercial licensee and the public safety agencies.⁵ As we noted in our initial Comments, with the critical terms of the NSA to be negotiated between the Public Safety Broadband Licensee (“PSBL”) and the D Block Licensee at the national level, it is far from clear how local governments will have any opportunity to shape the NSA to meet their specific local needs. We also concur with San Francisco that issues such as “insurance requirements, indemnification, the process for environmental review, and compliance with local business and zoning ordinances”⁶ must be addressed at the local level. In Philadelphia, we routinely negotiate contractual terms addressing these issues with vendors, and we cannot cede control over these negotiations to third parties. Thus, absent a real and meaningful opportunity to negotiate terms of

Requirements Through the Year 2010, WT Docket No. 96-86 (filed June 20, 2008) (“PSST Comments”) at 9-10.

⁴ See Comments of Verizon Wireless, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229; *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86 (filed June 20, 2008) (“Verizon Comments”) at 12.

⁵ *San Francisco Comments* at 7-8. The terms to be addressed in the NSA that are of concern to local governments include service level agreements, quality of sessions, throughput, fee structures, technical specifications, equipment configuration, prioritization of transmissions, security, redundancy, definition of terms, and access to infrastructure under local jurisdiction.

⁶ *Id.* at 8.

the NSA, local governments and their respective public safety users will either lack confidence in the national system, and thus elect not to participate, or worse, could be precluded from participating by terms in the NSA that are prohibited by local contracting rules.

2. Local Governments Must Decide Whether and How to Use the 700 MHz Spectrum.

The State of Louisiana and other commenters note that the right to develop networks in the public safety spectrum independently of any public/private partnership is critical to those localities for whom the build-out may come late, if ever.⁷ We join Louisiana and others in reiterating our support for the rights of state and local governments to build their own interoperable networks in the 700 MHz public safety spectrum, on a state or regional basis or by joining with adjacent jurisdictions. Not only is this option important for those jurisdictions that want or need to control the timing of broadband deployment, but denying local governments access to the 700 MHz public safety spectrum reduces their ability to negotiate acceptable terms with the commercial D Block licensee. If participation in a national system is the only way local governments may access the 700 MHz broadband spectrum, the commercial D Block licensee will have little incentive to accommodate the specific needs of local public safety users. The “take it or leave it”

⁷ Comments of the State of Louisiana, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229 (filed June 20, 2008) at 3; Comments of Independence Police Dept, *Comments Pertaining to PS 06-229 and WT 06-150* (filed June 18, 2008) (“IPD Comments”) at 1; Comments of Oregon State Interoperability Executive Council, *Comment on WT Docket No. 06-150 and PS Docket No. 06-229* (filed June 20, 2008) at 1.

approach that such a restriction would engender is unacceptable, and would violate the Commission's duty as a steward of the public safety spectrum.

In addition, we join the Independence Police Department , the Public Safety Spectrum Trust ("PSST"), and others in reiterating our opposition to mandated use of a national network.⁸ We agree with NATOA⁹ and Verizon that mandatory use would "undermine the very goals that the Commission is trying to achieve."¹⁰ To penalize a local government for opting out would turn local governments into revenue sources for the commercial licensee, essentially subsidizing the private entity.

B. The Commission Should Preserve Independent Development of Broadband Networks and Clarify the Role of Local and Regional Entities in the Design of the Network and Development of the NSA.

In order to address the concerns of local governments and ensure the success of the national network, we recommend the Commission take the following steps. First, the Commission should expand the membership of the PSBL to include national organizations that represent local governments.¹¹ Second, the Commission should clarify that local and regional entities will have an opportunity to participate

⁸ *IPD Comments* at 1; *PSST Comments* at 17; Comments of the National Regional Planning Council, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229 (filed June 20, 2008) at 4.

⁹ *NATOA Comments* at 18

¹⁰ *Verizon Comments* at 10.

¹¹ We endorse list of suitable representative organizations submitted by NATOA, which includes the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors (*NATOA Comments* at 16).

in the design of the network.¹² Third, the Commission should either revise the proposed scope of the NSA to reserve for local governments the right to negotiate critical terms, or clarify that local governments have the right to negotiate amendments to the NSA that address their specific concerns.¹³ In addition, to the extent that the PSBL negotiates the terms of the NSA on behalf of the public safety community, such negotiations should be open and transparent.¹⁴ Finally, the Commission should clarify that local governments retain the right to develop broadband networks in the 700 MHz public safety spectrum independently of any national network that may result from the proposed public/private partnerships.

C. The Commission Should Carefully Weigh the Advantages of Alternative Approaches to a Nationwide License.

Several commercial network providers, including AT&T, Verizon, and United States Cellular Corporation, support regional licenses for the D Block spectrum. Among other advantages, these providers note that developing networks at the regional level may provide greater flexibility to meet the specific needs of the

¹² As noted in our original Comments, the regional divisions of the National Public Safety Planning Advisory Committee could serve as a model for the regional representation required to negotiate NSAs.

¹³ United States Cellular Corporation has proposed a model wherein a regional D Block licensee would work with regional public safety users to negotiate amendments to the NSA. Comments of United States Cellular Corporation, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229 (filed June 20, 2008) (“USCC Comments”) at 18. We note that permitting amendments to the NSA at the regional level should be a requirement whether the D Block license is issued on a regional or national basis.

¹⁴ The City endorses the suggestion of the Association of Public-Safety Communications Officials-International, Inc., urging the Commission to require open meetings of PSBL’s board; Comments of Association of Public-Safety Communications Officials-International, Inc., *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229 (filed June 20, 2008) at 21.

agencies that will use the network¹⁵ and have the potential to provide more local accountability.¹⁶ Similar advantages have been cited for the proposal to forgo a spectrum auction and to instead develop the network by issuing RFPs.¹⁷ To the extent that these approaches have the potential to provide for more direct involvement of local governments, they merit serious consideration by the Commission. However, we note that neither the grant of regional licenses to the D Block spectrum nor an RFP process is sufficient, on its own, to ensure that the needs of local governments are addressed. For example, if the terms of the NSA are established by the PSBL without participation of local governments, then it makes little difference if the commercial provider chosen to deploy the network receives a national or regional license. Accordingly, while we appreciate the expressed willingness of commercial providers to develop locally-tailored networks, we urge the Commission to provide adequate safeguards to insure that local governments have a full and fair opportunity to reach acceptable terms. As noted above, this would require, at a minimum, permitting local governments to opt out of the public/private partnership if acceptable terms are not reached, and preserving the

¹⁵ “Smaller license areas will allow for local and regional build-out to be managed by specific public safety regional planning committees, ensuring that development, deployment, and training is conducted in cooperation with and in response to the needs of local public safety groups.” Comments of AT&T Inc., *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229 (filed June 20, 2008) (“AT&T Comments”) at 25.

¹⁶ *USCC Comments* at 9

¹⁷ See, e.g., *Verizon Comments* at 19-20 (noting that selection through an RFP process allows for “evaluation of potential partners on a range of criteria to increase the chances the partnership will succeed”); *AT&T Comments* at 24 (stating that the RFP mechanism would be developed with input from local public safety entities); NATOA Comments at 22 (noting that RFPs would provide a level playing field and ensure that proposals become part of the public record).

right of local governments to join together to independently develop interoperable broadband networks in the 700 MHz public safety spectrum.

D. A National License is not Required to Ensure Interoperability.

PSST contends that interoperability depends on a nationwide license.¹⁸

However, there is no reason that the PSLB, working with the Commission, cannot establish interoperability standards for the network, even if those standards are implemented regionally.¹⁹ While developing a nationally interoperable network on a regional basis is, by itself, not sufficient to guarantee adequate control and decision-making by local governments, it merits serious consideration. Accordingly, we urge the Commission to reject any attempts to characterize a national public/private partnership as the only way to ensure national interoperability.

III. CONCLUSION

The comments submitted in response to the Second FNPRM demonstrate that local governments continue to have serious reservations regarding the use of a public/private

¹⁸ *PSST Comments* at 38.

¹⁹ We note that this approach is endorsed by San Francisco (*San Francisco Comments* at 7) and raised as a possibility by Verizon (*Verizon Comments* at 6) and Telecommunity (Comments of Telecommunity, Charlotte, N.C., Houston, Texas, and Montgomery County, MD, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150; *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229 (filed June 20, 2008), at 9).

to deploy an interoperable network on a national scale. We urge the Commission to address these concerns by adopting rules that reserve for local governments the right to decide issues related to network design, and the right to negotiate terms of the NSA.

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Respectfully submitted,

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